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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 400

DAN LEROY HALL,

Appellant,

vs.

COMMONWEALTH OF VIRGINIA

APPEAL FROM THE SUPREME COURT OF APPEALS OF THE COMMONWEALTH OF VIRGINIA

MOTION TO DISMISS OR AFFIRM

J. LINDSAY ALMOND, JR.,
Attorney General of Virginia,
Counsel for Appellee.

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APPELLEE'S MOTION TO DISMISS OR AFFIRM

The appellee, believing that the matters set forth in the Memorandum in support of this motion will demonstrate the lack of substance in the question raised by this appeal, files this, his motion to dismiss the appeal or, in the alternative, to affirm the judgment of the Supreme Court of Appeals of Virginia on the ground that the question raised on behalf of the appellant has been so plainly foreclosed by decisions of this Court as to make further argument unnecessary.

While the cause is one which would otherwise be reviewable by the Supreme Court of the United States on direct appeal from the Supreme Court of Appeals of Virginia, appellee asserts that, for the reasons stated in the Memorandum filed in support of this motion, the Court is warranted in summarily disposing of the appeal at this stage of the proceeding.

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MEMORANDUM IN SUPPORT OF MOTION TO DISMISS OR AFFIRM

This appeal raises the question of the constitutionality of §4480-A of the 1942 Code of Virginia. That statute reads as follows:

> "If any person shall without authority of law go upon or remain upon the lands or premises of another, after having been forbidden to do so by the owner, lessee, custodian or other person lawfully in charge or possession of such land, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than twenty-five dollars."

It is urged by the appellant that this statute, as construed and applied in connection with a regulation in effect as to visitors at the Monroe Terrace, an apartment house in Richmond, Virginia, abridges the appellant's freedom of speech, press and worship.

The Monroe Terrace is a single apartment building of twelve stories, containing approximately 60 apartments. It is owned by the Monroe Prestwould Corporation, a private corporation. The regulation involved in the case has been in effect for over fifteen years, and while it is oral, the trial court found it had been approved by the tenants through custom and long usage.

This regulation requires every visitor who enters the building to stop at the desk in the entrance lobby and have the clerk announce his arrival to the tenant over the telephone. If the tenant informs the clerk that the visitor is expected, he is authorized to use the elevators and halls without question. If the visitor has no express invitation, the clerk calls the tenant, and if the tenant wishes to see the visitor, he is directed how to find the apartment. If the tenant does not wish to see the visitor, or is out, the clerk so informs the visitor and, for the time being, he is forbidden the use of the hallways or elevators.

On August 20, 1946, the appellant, a member of Jehovah's Witnesses, distributed his literature and made his calls upon tenants in the Monroe Terrace, apparently without knowledge of the regulation. The apartment manager advised him of the regulation and explained that he could call upon the tenants only by complying with it. On August 27, 1946, the appellant again called upon the various tenants without complying with the regulation, and after the warning. For this he was arrested and convicted.

Grounds and Decisions Supporting Motion to Dismiss

One

The decision of the Supreme Court of Appeals of Virginia is correct because it is based upon applicable principles and statements approved by this Court.

Martin v. *Struthers,* 319 U. S. 141, 63 S. Ct. 862;

Marsh v. *Alabama*, 326 U. S. 501, 66 S. Ct. 276;
Tucker v. *Texas*, 326 U. S. 517, 66 S. Ct. 274.

Two

The statute as construed and applied to convict the appellant for trespass committed after warning does not deprive the appellant of any constitutional rights.

A

The Supreme Court of Appeals of Virginia and the trial court have determined that the regulation is in effect with the approval of the apartment owner and the tenants. This regulation having the approval of the tenants, the appellant had no right to go beyond the lobby desk and enter the inner halls of the apartment without having secured the consent of one of the tenants. His assertion that he does have a constitutional right to do so under the facts found in this case does not present a substantial Federal question worthy of further argument.

B

Even if the regulation had not been approved by the tenants, it is a proper one to be promulgated by a private owner to apply upon his private property. The regulation is reasonable and does not prohibit the appellant from contacting and visiting any tenant in the apartment. It leaves up to each householder or tenant the right to determine whether he will receive the visitor.

Discussion

That this regulation is a valid and proper one, depriving no one of any constitutional rights, would seem to be clear under decisions of this Court. The regulation has been found to have the approval of the tenants by the Supreme

Court of Appeals of Virginia and the trial court. That this finding of fact does not in itself raise a federal question and is to be accorded great respect would seem to be well established. *Akins* v. *State of Texas*, 325 U. S. 398, 65 S. Ct. 1276. Particularly would this seem to be so where there is, as here, no evidence contrary to the finding of the state court, and where the question of fact does not involve the determination of whether a conviction was secured through methods which violate the Fourteenth Amendment. It is not for this Court to make an independent evaluation of the testimony before the state court. The determination by the state court should not be rejected unless such determination is so without warrant as to be palpable evasion of the constitutional guaranty invoked. *Milk Wagon Drivers Union* v. *Meadowmoor Dairies*, 312 U. S. 287, 61 S. Ct. 552. Here, the appellant made no effort in the trial court to rebut the Commonwealth's evidence as to the acceptance of the regulation by the tenants. The testimony of the tenants was as available to the appellant as it was to the Commonwealth.

The appellant appears to admit that an express agreement to this regulation and its enforcement by the tenants would properly prohibit him from using the inner hallways to make his calls without complying with the regulation. The regulation here involved is oral, but it still represents an express agreement between landlord and tenant, having been approved by the tenants through custom and usage.

The statute and regulation take this case beyond the ban of *Martin* v. *Struthers*, *Marsh* v. *Alabama* and *Tucker* v. *Texas*, *supra*. No community is substituting its judgment for that of the individual tenant as to the distribution of literature. The channels of communication between the appellant and the tenants are not blocked, except in so far as the tenant wishes to remove himself from the calls and solicita-

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tions of strangers by becoming the lessee in an apartment with such a regulation. The Monroe Prestwould Corporation has not attempted to decide for its tenants whether they should permit persons not specifically invited to go from door-to-door communicating ideas and invitations to the occupants. The tenants have decided for themselves that they wish to be spared such calls and visitations, and that such decision by the tenant, as reflected in the regulation, violates no constitutional rights of the appellant cannot be, and does not seem to be, seriously questioned by the appellant.

The appellant's contention appears to be that the tenants have not approved this regulation, and that the landlord has, by it, cut the tenants off entirely from contact with the door-to-door caller. Not only is this contention contrary to the finding of fact, but it is also a misstatement of the effect of the regulation.

Even without the approval of the tenants, the regulation under attack here would be a proper one for the owner of private property to impose upon the use of his own property. The property here involved is one apartment house, used solely for residential purposes and in no way open to use by the public in general, as was the case of the towns in *Marsh* v. *Alabama* and *Tucker* v. *Texas, supra.* Also, unlike the regulations involved in those two cases, this regulation does not prevent and prohibit solicitation, it merely provides a reasonable means of regulating it. The appellant was informed, as the record will show, that he could go in the inner hallways to call upon any tenant, if he first secured the permission of that tenant. (R. 63, 64, 68.)

The argument advanced that this regulation prevents the tenant from having any contact whatever with door-to-door distribution is incorrect in fact and unsound as a constitutional objection, even if true. As a matter of fact,

the names of the tenants are available in the city directory, and their telephone numbers are in the public telephone book, if the tenant wishes his telephone number to be available to strangers. These tenants can be contacted in the normal manner, and the fact that this regulation requires that they be first contacted deprives no one of his constitutional rights.

Even if there is no means of telephoning or contacting all of the tenants, as argued by the appellant, this is certainly no constitutional objection to the regulation. Each tenant has the right to decide for himself whether he will or will not have a telephone and let his number be placed in the public book.

It is conceivable that a tenant would not have his number listed in order to avoid just such calls as are involved in this case. Each tenant surely has the right to hold out to the general public such means as he may wish to be used by the general public in communicating with him. If a person wishes to be easily accessible to the public, he can have his name listed in the public directory and telephone book. If he wishes a certain amount of insulation from the calls of strangers, he need not have a telephone or he may have the number kept from the public book. If he desires additional removal from the calls of strangers, he may become a tenant in an apartment wherein there exists a regulation such as the one in force in the Monroe Terrace Apartments. Even if it be argued that the tenants have not expressly approved the regulation, it cannot be said that they do not have knowledge of its existence.

Such a regulation as this, even without the express approval of the tenant, is clearly approved by the *Martin*, *Marsh* and *Tucker* cases, *supra*. No liberties of the tenants are restricted by this regulation. The landlord does not substitute his judgment for that of the tenant. The tenant

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is free to receive whomsoever he may wish. This regulation leaves the decision as to whether distributers of literature may lawfully call upon a person with that person himself. That this is where the decision belongs is expressly stated in *Martin* v. *Struthers, supra.*

This regulation properly leaving that decision where it belongs, and not being an unreasonable burden upon anyone, once the appellant has been warned of it by the landlord and ordered to keep away unless he complies with the regulation, he may properly be punished under the anti-trespass statute.

Conclusion

It is respectfully submitted that no substantial federal question is presented upon this appeal, and, therefore, jurisdiction should not be noted.

J. Lindsay Almond, Jr.,
Attorney General
Commonwealth of Virginia
Attorney for Appellee.